

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DARONTA TYRONE LEWIS,
Plaintiff,
v.
GAVIN NEWSOME, ET. AL.,
Defendants.

Case No. 1:22-cv-01036-ADA-HBK (PC)
NOTICE OF VOLUNTARILY DISMISSAL
UNDER RULE 41(a)(1)(A)(i)
(Doc. No. 8)

Pending before the Court is Plaintiff's pleading titled "motion to withdraw federal civil rights action without prejudice" filed on October 27, 2022. (Doc. No. 8). On October 12, 2022, the undersigned issued Findings and Recommendations to the district court to deny Plaintiff's motion for leave to proceed in forma pauperis under § 1915(g) due to Plaintiff's three-striker and his failure to establish the imminent danger of physical injury exception. (Doc. No. 7). In response, Plaintiff filed the instant pleading asking the Court "to grant [this motion] without prejudice" because Plaintiff seeks to "have an attorney refile [it]." (Doc. No. 8 at 2).

Here, no Defendant has been served, or filed a response or motion for summary judgment and Plaintiff seeks dismissal, without prejudice, of this action. The Court construes the pleading as a notice of voluntary dismissal under Federal Rule of Civil Procedure 41(a)(1)(A)(i). *See Castro v. United States*, 540 U.S. 375, 381-82 (2003) (courts may recharacterize a *pro se* motion to "create

1 a better correspondence between the substance of a *pro se* motion's claim and its underlying legal
2 basis"); *Bernhardt v. Los Angeles County*, 339 F.3d 920, 925 (9th Cir. 2003) (courts have a duty to
3 construe *pro se* pleadings and motions liberally). Considering Plaintiff's request for dismissal
4 without prejudice, this case is dismissed with prejudice by operation of law without further order
5 by the Court. *See Wilson v. City of San Jose*, 111 F.3d 688, 692 (9th Cir. 1997) (noting a plaintiff
6 has an absolute right to dismiss a case, prior to defendant serving an answer or motion for summary
7 judgment, which is effective upon notice, without court order).

9 Accordingly, Plaintiff's pleading titled "motion to withdraw federal civil rights action
10 without prejudice" (Doc. No. 8) is construed as a notice under Rule 41. The Clerk of the Court
11 shall terminate all deadlines and motions and CLOSE THIS CASE to reflect Plaintiff's voluntary
12 dismissal without prejudice under Rule 41(a)(1)(A)(i).

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15 Dated: October 28, 2022


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE